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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/699,520
Filing Date: October 31, 2003
Appellant(s): HERBACH ET AL.

William E. Hunter
Reg. No. 47,671
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on May 12, 2010 appealing from the Office action mailed on November 13, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application: claims 2, 3, 6-10, 12-18, 20, 22, 24-33, 35, 37-41, and 47-56 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN

REJECTIONS.” New grounds of rejection (if any) are provided under the subheading “NEW GROUNDS OF REJECTION.”

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant’s brief.

(8) Evidence Relied Upon

6,694,434	MC GEE ET AL.	02-2004
7,062,765	PITZEL ET AL.	06-2006
US2002/0078081 A1	BIERBRAUER ET AL.	06-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

9.1 Claims 2-3, 6-8, 12-18, 20, 22, 24-27, 30-33, 35, 37-41, 47-53, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,694,434 to **McGee et al** in view of US Patent 7,062,765 to **Pitzel et al** (*Applicant’s IDS*).

As per claim 2, McGee et al substantially discloses a method comprising: *receiving a request from a client, at a server comprising a computer system including a hardware processor, the request from a client to take the action with respect to the distributed electronic document (see column 5, lines 13-40 and column 7, lines 63-67; see also column 10, line 65 through column 11, line 2), identifying at the server, in response to the request, information (such as registration data but not limited to) associated with the distributed electronic document retained locally at the client (see column 12, lines 29-42 and (see column 5, lines 13-40 and column 9,*

lines 50-57), *the associated information comprising user-dependent information indicating a second electronic document (a new version) different from the distributed electronic document* (see column 12, lines 29-63; column 12, line 64 through column 13, line 37);

McGee et al also discloses receiving a request to take an action with respect to a distributed electronic document, identifying, in response to the request, information (such as registration data but not limited to) associated with the distributed electronic document (see column 6, lines 19-67), *the associated information comprising user-dependent information and indicating a second electronic document (a new version) different from the distributed electronic document* (see column 6, lines 19-67);

McGee et al also discloses *and imparting information concerning the second electronic document to force the action to be taken with respect to the second electronic document (new version)* (see column 12, lines 29-63); *wherein imparting the second document information comprises relating the second document information from the server to the client* (see column 12, lines 45-63). **McGee et al** discloses, see column 5, lines 48-55, the calling application data includes location of the exec file associated with the calling application; which may correspond to a different version (second document) in col.6, lines 34-36) (see also column 6, lines 59-67 disclosing calling application is based on specific users or userids; column 7, lines 46-47 disclosing application verification data such as hash value (column 6, lines 51-56), which also comprises exec file corresponding to the application based also on userid. See also column 13, lines 4-5 disclosing the program on the hash list includes a user identifier attached to the hash value.

McGee et al does not explicitly disclose *the second electronic document indicated by the user-dependent association information being dependent on an identified user at the client.*

Pitzel et al in an analogous art discloses the client profile contains client conditions which include the user identifier, and the user identifier may be used to determine each component or version to be downloaded to the client when an upgrade is requested (see column 8, line 64 through column 9, line 15 and column 9, lines 54-65; and column 10, lines 2-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the new version document (second document) of **McGee et al** dependent on user identification number at the client because the dependency information makes it easier to identify other components that may be needed by the client computer as suggested by **Pitzel et al** (see column 9, line 65 through column 10, line 12).

As per claim 3, McGee et al discloses the limitation of wherein relating the second document information comprises sending the second document information to the client to allow the client to obtain the second document (see column 12, lines 45-63).

As per claim 6, McGee et al discloses the limitation of wherein relating the second document information comprises: obtaining the second electronic document and sending the second electronic document to the client (see column 12, lines 45-63).

As per claim 7, McGee et al discloses the limitation of wherein the second electronic document comprises a later version of the distributed electronic document (see column 12, lines 31-39), and the associated information comprises document-permissions information specifying that the action is not permitted with respect to the distributed electronic document at the client (see column 11, lines 36-57).

As per claim 8, McGee et al discloses the limitation of wherein the document-permissions information specifies access permissions at a level of granularity smaller than the distributed electronic document within the distributed document (see column 6, lines 12-14 and 56-67 McGee discloses the calling application is constrained to specific privileges such as read/write controls on various files structures and other execution privileges).

As per claim 12, McGee et al discloses the limitation of wherein the distributed electronic document comprises a software program, the second electronic document comprises a later version of the software program, and the action comprises running the software program (see column 12, lines 45-63 and column 6, lines 59-67).

As per claim 13, McGee et al discloses the limitation of accessing the distributed electronic document at the client (see column 11, lines 7-14); identifying an address of the server and a document identifier in the distributed electronic document (see column 12, lines 57-67); sending the document identifier and the requested action to the server using the address (see column 12, lines 57-67 disclosing identification data is sent using the location information) and

replacing the distributed document, at the client, with the second document (see column 12, lines 45-63 and column 2, lines 35-41 disclosing it is implicit that upgrading may include replacing).

As per claim 14, McGee et al discloses running the new version that meets the recitation of wherein replacing the distributed document comprises performing the action with respect to the second document (see column 12, lines 45-63 and column 2, lines 35-41).

As per claim 15, McGee et al discloses the limitation of wherein the second document includes the address of the server and a second document identifier, (see column 12, lines 57-67) and replacing the distributed document further comprises automatically and without user awareness writing over the distributed document with the second document in a storage device (see column 12, lines 45-63 and column 2, lines 35-41 disclosing it is implicit that upgrading may include replacing or overwriting). **McGee et al** discloses new version replacing/overwriting an old version automatically without user approval (see column 12, lines 45-56).

As per claim 24, McGee et al discloses a software product tangibly embodied in a machine-readable medium, the software product comprising instructions operable to cause one or more data processing apparatus to perform operations comprising: *receiving a request from a client at a server to take an action with respect to a distributed electronic document retained locally at the client* (see column 5, lines 13-40 and column 7, lines 63-67; see also column 10, line 65 through column 11, line 2), *identifying at the server, in response to the request, information* (such as registration data but not limited to) *associated with the distributed*

electronic document retained locally at the client (see column 12, lines 29-42 and (see column 5, lines 13-40 and column 9, lines 50-57), *the associated information comprising user-dependent information indicating a second electronic document (a new version) different from the distributed electronic document* (see column 12, lines 29-63; column 12, line 64 through column 13, line 37);

McGee et al also discloses receiving a request to take an action with respect to a distributed electronic document, identifying, in response to the request, information (such as registration data but not limited to) associated with the distributed electronic document (see column 6, lines 19-67), the associated information comprising user-dependent information and indicating a second electronic document (a new version) different from the distributed electronic document (see column 6, lines 19-67);

McGee et al also discloses *and imparting information concerning the second electronic document to force the action to be taken with respect to the second electronic document* (new version) (see column 12, lines 29-63); *wherein imparting the second document information comprises relating the second document information from the server to the client* (see column 12, lines 45-63). **McGee et al** discloses, see column 5, lines 48-55, the calling application data includes location of the exec file associated with the calling application; which may correspond to a different version (second document) in col.6, lines 34-36) (see also column 6, lines 59-67 disclosing calling application is based on specific users or userids; column 7, lines 46-47 disclosing application verification data such as hash value (column 6, lines 51-56), which also comprises exec file corresponding to the application based also on userid. See also column 13,

lines 4-5 disclosing the program on the hash list includes a user identifier attached to the hash value.

McGee et al does not explicitly disclose *the second electronic document indicated by the user-dependent association information being dependent on an identified user at the client.*

Pitzel et al in an analogous art discloses the client profile contains client conditions which include the user identifier, and the user identifier may be used to determine each component or version to be downloaded to the client when an upgrade is requested (see column 8, line 64 through column 9, line 15 and column 9, lines 54-65; and column 10, lines 2-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the new version document (second document) of **McGee et al** dependent on user identification number at the client because the dependency information makes it easier to identify other components that may be needed by the client computer as suggested by **Pitzel et al** (see column 9, line 65 through column 10, line 12).

As per claim 25, McGee et al discloses the limitation of wherein relating the second document information comprises sending the second document information to the client to allow the client to obtain the second document (see column 12, lines 45-63).

As per claim 26, McGee et al discloses the limitation of wherein relating the second document information comprises: obtaining the second electronic document; and sending the second electronic document to the client (see column 12, line 64 through column 13, line 37).

As per claims 27 and 30, these claims recite similar limitations to claims 7 and 12 respectively except for incorporating the claimed method into a software product, and therefore they are rejected on the same rationale as the rejection of claims 7, 9, 10, and 12 above.

As per claim 39, McGee et al discloses a system comprising: *a client comprising a computer including a hardware processor operable to send a request when an action is to be taken with respect to a distributed electronic document local to the client* (see column 11, lines 7-14 and lines 37-45); (see column 5, lines 13-40 and column 7, lines 63-67; see also column 10, line 65 through column 11, line 2),

a server comprising a computer system including a hardware processor operable to receive the request, and in response to the client, the server being operable to identify information associated with the distributed electronic document, (see column 12, lines 29-42), *the associated information comprising user-dependent information and indicating a second electronic document (a new version) different from and associated with the distributed electronic document* (see column 12, lines 29-63; column 12, line 64 through column 13, line 37); (see also column 6, lines 19-67), *the server being operable to relate information concerning the second electronic document to the client to force the action to be taken* (see column 12, line 64 through column 13, line 37 and column 12, lines 45-63).

McGee et al discloses, see column 5, lines 48-55, the calling application data includes location of the exec file associated with the calling application; which may correspond to a different version (second document) in col.6, lines 34-36) (see also column 6, lines 59-67 disclosing calling application is based on specific users or userids; column 7, lines 46-47

disclosing application verification data such as hash value (column 6, lines 51-56), which also comprises exec file corresponding to the application based also on userid. See also column 13, lines 4-5 disclosing the program on the hash list includes a user identifier attached to the hash value.

McGee et al does not explicitly disclose *the second electronic document indicated by the user-dependent association information being dependent on an identified user at the client.*

Pitzel et al in an analogous art discloses the client profile contains client conditions which include the user identifier, and the user identifier may be used to determine each component or version to be downloaded to the client when an upgrade is requested (see column 8, line 64 through column 9, line 15 and column 9, lines 54-65; and column 10, lines 2-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the new version document (second document) of **McGee et al** dependent on user identification number at the client because the dependency information makes it easier to identify other components that may be needed by the client computer as suggested by **Pitzel et al** (see column 9, line 65 through column 10, line 12).

As per claim 40, McGee et al discloses the limitation of wherein the server comprises: a server core with configuration and logging components (see column 4, lines 14-34); an internal services component that provides functionality across dynamically loaded methods and dynamically loaded external service providers, including one or more access control service providers (see column 4, lines 14-34).

As per claim 41, McGee et al discloses as interpreted by the Examiner **McGee et al** discloses a central distribution server associated with different servers that meets the recitation of a business logic tier comprising a cluster of document control servers, including the server (see column 4, lines 14-34 and column 10, lines 61-67); an application tier including the client comprising a viewer client (user interface) (see column 12, lines 19-25), a securing client (see fig. 1), and an administration client (see fig. 1); and a load balancer that routes client requests to the document control servers (see column 13, lines 20-29).

As per claim 47, McGee et al discloses the limitation of wherein the document-permissions information specifies access permissions at a level of granularity smaller than the distributed electronic document within the distributed document (see column 6, lines 59-67 McGee discloses read/write controls on various files structures).

As per claim 48, McGee et al discloses the limitation of wherein the document-permissions information specifies access permissions at a level of granularity smaller than the distributed electronic document within the distributed document (see column 6, lines 12-14 and 56-67 McGee discloses the calling application is constrained to specific privileges such as read/write controls on various files structures and other execution privileges).

As per claim 49, McGee et al discloses the limitation of accessing the distributed electronic document at the client (see column 11, lines 7-14); identifying an address of the server and a document identifier in the distributed electronic document (see column 12, lines 57-67);

sending the document identifier and the requested action to the server using the address (see column 12, lines 57-67 disclosing identification data is sent using the location information)' and replacing the distributed document, at the client, with the second document (see column 12, lines 45-63 and column 2, lines 35-41 disclosing it is implicit that upgrading may include replacing).

As per claim 50, McGee et al discloses the limitation of wherein replacing the distributed document comprises performing the action with respect to the second document (see column 12, lines 45-63 and column 2, lines 35-41).

As per claim 51, McGee et al discloses the limitation of wherein the second document includes the address of the server and a second document identifier, (see column 12, lines 57-67) and replacing the distributed document further comprises automatically and without user awareness writing over the distributed document with the second document in a storage device (see column 12, lines 45-63 and column 2, lines 35-41 disclosing it is implicit that upgrading may include replacing or overwriting). **McGee et al** discloses new version replacing/overwriting an old version automatically without user approval (see column 12, lines 45-56).

As per claim 52, McGee et al discloses the limitation of wherein the second electronic document comprises a later version of the distributed electronic document (see column 12, lines 31-39), and the associated information comprises document-permissions information specifying that the action is not permitted with respect to the distributed electronic document at the client (see column 11, lines 36-57).

As per claim 53, McGee et al discloses the limitation of wherein the document-permissions information specifies access permissions at a level of granularity smaller than the distributed electronic document (see column 6, lines 12-14 and 56-67 McGee discloses the calling application is constrained to specific privileges such as read/write controls on various files structures and other execution privileges).

As per claim 56, McGee et al discloses the limitation of wherein the client is operable to identify an address of the server and a document identifier in the distributed electronic document (see column 6, lines 59-67 and lines 39-50); send the document identifier and the requested action to the server using the address (see column 6, lines 59-67 and lines 39-50); and replace the distributed document, at the client by writing over the distributed document with the second document in a storage device (see column 12, lines 45-63 and column 2, lines 35-41 disclosing it is implicit that upgrading may include replacing or overwriting). **McGee et al** discloses new version replacing/overwriting an old version automatically without user approval (see column 12, lines 45-56).

9.2 Claims 16-18, 20, 22, 31-33, 35, and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,694,434 to **McGee et al**

As per claim 16, McGee et al discloses a method comprising opening a locally retained distributed document (see column 11, lines 7-13); contacting a document control server identified from the distributed document (see column 12, lines 57-67 and column 12, lines 45-

63); transmitting authentication information to the document control server (see column 6, lines 51 through column 7, line 14) and forcing use at the client of a second document in place of the distributed document, with respect to at least one document action, based on information received from the document control server (see column 12, line 64 through column 13, line 37). **McGee et al** discloses wherein the second electronic document comprises a later version of the distributed document and forcing use of the second document (see column 12, line 64 through column 13, line 37).

McGee et al does not explicitly disclose transparently closing the distributed document and opening the second document. Examiner takes official notice that in Windows application to perform an upgrade, the old version of the application is closed, upgraded, then the new version is subsequently opened automatically. This feature is very well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to transparently closing the distributed document and opening the second document because it would allow files to be replaced or overwritten and not corrupted on the old version by closing it as known in the art.

As per claim 17, McGee et al discloses the limitation of obtaining the second document based on the received information (see column 12, line 64 through column 13, line 37).

As per claim 18, McGee et al discloses the limitation of wherein the received information comprises the second document (see column 12, line 64 through column 13, line 37 and column 12, lines 45-63).

As per claim 20, McGee et al discloses the limitation of wherein forcing use further comprises transparently overwriting the distributed document with the second document (see column 12, lines 45-63 and column 2, lines 35-41 disclosing it is implicit that upgrading may include replacing or overwriting).

As per claim 22, McGee et al discloses the limitation of wherein the distributed electronic document comprises a software program, the second electronic document comprises a later version of the software program, and the at least one document action comprises running the software program (see column 12, line 64 through column 13, line 37 and column 12, lines 45-63).

As per claims 31-33, 35, and 37-38, these claims recite similar limitations to claims 16-18, 20, 8, and 22, respectively, except for incorporating the claimed method into a software product, and therefore they are rejected on the same rationale as the rejection of claims 16-20, 8, and 22 above.

9.3 Claims 9, 10, 28, 29, 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,694,434 to **McGee et al** in view of US Patent 7,062,765 to **Pitzel et al** (*Applicant's IDS*) and further in view of US Patent Publication US 2002/0078081 to **Bierbrauer et al**.

As per claims 9, 28, and 54, **McGee et al** discloses identifying document as having a new version being released and identifying a new version is available, which implies that the latest version is outdated that reads on the claimed limitation the distributed document identified as outdated (see column 12, lines 36-42) but does not explicitly disclose the distributed document being a stub document. However, **Bierbrauer et al** in an analogous art discloses a stub document containing the information required to retrieve another document (see paragraphs 14, 17, and 31).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a stub document as a distributed document so that less resource is consumed as suggested by **Bierbrauer et al**.

As per claim 10, **McGee et al**, **Pitzel et al**, and **Bierbrauer et al** disclose the limitation of wherein obtaining the second electronic document further comprises generating at least a portion of the second electronic document based on the identified user (see **Pitzel et al**, column 8, line 64 through column 9, line 15 and column 9, lines 54-65; and column 10, lines 2-12).

As per claims 29 and 55, **McGee et al**, **Pitzel et al**, and **Bierbrauer et al** disclose the limitation of wherein obtaining the second electronic document further comprises generating at least a portion of the second electronic document based on the identified user (see **Pitzel et al**, column 8, line 64 through column 9, line 15 and column 9, lines 54-65; and column 10, lines 2-12).

(10) Response to Argument

10.1 With respect to **claim 2**, Appellant argues (see page 9) that *Pitzel does not draw a distinction between the client computer and the user as done in the claim and adds examples of Pitzel correspond to the client computer and not an identified user.*

Examiner respectfully disagrees. Pitzer's examples are related to the client computer as they are used just for exemplary purposes. Pitzer clearly discloses (see column 9, lines 1-5) that the client conditions include a preferred language, the existence of components of the client computer and/or user identification number that is associated with the user. Column 9, lines 6-22 discloses the client conditions are determined subsequent to each request by the user and are obtained by a variety of methods including some examples of what the identification number can represent as a unique identifier. The invention is not to be limited to these examples or sources to derive the client conditions from. In addition, column 1, lines 18-20 and lines 33-39, and column 4, lines 41-54 disclose a language identifier that may be used to identify users interested in French as part of client conditions. The language preference for instance shows that client conditions are not only client computer-specific as argued by Appellant but also user-specific.

Claims 3, 6-8, 12-15, 24-27, 30, 39-41, 47-53, and 56 depend on claim 2 and no further argument is presented by appellant with respect to these claims. Therefore, the rejection of these claims should be sustained for at least the same reasons with respect to claim 2 above.

10.2 With respect to **claims 8, 48, and 53** (see pages 9-10), Appellant argues *Mc Gee discloses the limits imposed on the program's ability to read and write to files in the file system of the computer not to limits imposed by access permissions for portions of the program itself. In response to this point the office notes that McGee discloses constraints on the program itself because the program is not fully executable. While this is true, it does not address the claim language since it does not address how the constraints on the program itself are considered to be at a level of granularity smaller than the distributed document within the distributed document.*

Examiner notes that McGee disclosing (see column 6, lines 51-67) permission to execute at a certain time of day, on certain devices is a restriction within the application itself and it is at a granularity smaller than the application when compared to the fact that the application is able to operate anytime and on any devices (i.e. without the restrictions).

10.3 Regarding **claims 16-18, 20, 22, 31-33, 35, and 37-38**, Appellant argues with respect to **claim 16**, (see pages 10-11) *closing the document automatically without the user performing the closing is not sufficient to meet the claim language.*

Examiner notes that it is not the word dynamically that is equated to transparently but the way the process is done smoothly without the user being aware of everything that takes place during the upgrading. In addition, while Appellant is arguing that automatically is not equivalent to transparent, applicant's original specification describes on page 16, paragraph 68, *"the appropriate code can be downloaded to the client dynamically, as needed, in a manner that is transparent to the client."* In addition, on page 3 of the appeal brief, Appellant indicates page 39, lines 17-23 of the specification as support for claim 16, which describes, *"The first document*

1640 can be replaced with the second document 1650 (e.g., opened in place of the first document and/or written to storage over the first document) by the client 1610, including potentially without the knowledge of the user". This process does not appear either to be different from Examiner's Official Notice taken by the Examiner. Therefore, the rejection of claims 16-18, 20, 22, 31-33, 35, and 37-38 should be sustained.

10.4 Regarding claims 20 and 35, Appellant argues, "*upgrading does not implicitly include transparently overwriting a distributed document.*"

Examiner asserts that to one of ordinary skill in the art, upgrading i.e. changing to a newer version does include replacing the old version and consequently, files are overwritten when replaced.

10.5 Regarding claims 9, 10, 28, 29, 54, and 55, Appellant argues with respect to claims 9, 28, and 54, "*McGee does not teach or suggest the distributed document is a stub document identified as outdated when originally sent for distribution, since the programs are fully functional without any update version being available when they are originally distributed*".

Examiner respectfully disagrees. First, the claim does not recite an update version being available when the document was originally sent for distribution. Second, the claim may be broadly and reasonably interpreted as upon detection that new program is released, the old or original version is identified as outdated when it was originally sent for distribution as disclosed by Mc Gee in column 12, lines 36-63. "...outdated when originally sent from distribution" may

be broadly interpreted as “*original version is outdated*” and according to the claim language, the identifying is not required to take place at the time of distribution.

10.6 Regarding **claims 10, 29, and 55**, Examiner disagrees with Appellant’s general allegation “*Pitzel does not disclose generating at least a portion of second electronic document based on the identified user*”. Pitzer clearly discloses (see column 9, lines 1-5) that the client conditions include a preferred language, the existence of components of the client computer **and/or user identification number that is associated with the user**. Column 9, lines 6-22 discloses the client conditions are determined subsequent to each request by the user and are obtained by a variety of methods including some examples of what the identification number can represent as a unique identifier. The invention is not to be limited to these examples or sources to derive the client conditions from. In addition, column 1, lines 18-20 and lines 33-39, and column 4, lines 41-54 disclose a language identifier that may be used to identify users interested in French as part of client conditions. The language preference for instance shows that client conditions are not only client computer-specific as argued by Appellant but also user-specific.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Carl Colin/

Primary Examiner, Art Unit 2433

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